

**DEC 15 2005**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ZAIREN ZHU,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 03-71755

Agency No. A74-389-192

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, TASHIMA and FISHER, Circuit Judges.

Zairen Zhu, a native and citizen of China, petitions for review of an order of the Board of Immigration Appeals (“BIA”) dismissing his appeal of an

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's order denying his motion to reopen removal proceedings conducted in absentia. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the denial of a motion to reopen for abuse of discretion, *see Celis-Castellano v. Ashcroft*, 298 F.3d 888, 890-91 (9th Cir. 2002), and we deny the petition for review.

Zhu, who is represented by counsel, does not challenge the BIA's determination that Zhu's "vague description of his brief illness" did not establish exceptional circumstances excusing his failure to appear at his removal hearing. Accordingly, he has waived his right to challenge this determination. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) (holding that issues which are not specifically raised and argued in a party's opening brief are waived).

We do not consider Zhu's contentions regarding nonpayment of the filing fee, because Zhu's failure to establish that his absence was due to exceptional circumstances is dispositive. *See* 8 U.S.C. § 1229a(b)(5)(C)(i).

**PETITION FOR REVIEW DENIED.**